IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1566 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRA RAMDAS INDI

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 1566 of 2001

MR GI DESAI for Petitioners No. 1-2

RULE SERVED for Respondent No. 1

MR RAJNI H MEHTA for Respondents No. 2-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 09/10/2001

ORAL JUDGEMENT

Heard learned counsel Mr. GI Desai for the petitioners and Mr. RH Mehta learned counsel for respondent-ONGC. According to the petitioners, they have

been recruited for the work of ONGC through contractor in the category of helper who had undertaken the work as Labour Contractor for respondent-ONGC in the year 1989. It is contended that since 1992 they are continuously working with ONGC. The basic contention of the petitioners is that as per the procedure and method of employment adopted by ONGC periodically the contractors are changed, but the same workers and labourers are ask to work continuously without any break in their service. One of the say of the petitioner is that the petitioners could have been regularised in services of respondent-ONGC but till date of termination they were working as a persons under contractor with ONGC. It seems that the petitioners were working with Sulphur Recovery Unit which can be said to be hazardous chemical. It is the say of the petitioners that respondent-ONGC has introduced a policy whereby the contractors are asked to provide employees who are having minimum qualification of passing SSC examination or any other equivalent qualification. Undisputedly, both the petitioners are not matriculate as they have not passed SSC examination. Mr. Desai hammered mainly on the aspect that as per the verdict of the Apex Court in the case of Bhagawati Prasad vs. Delhi State (AIR 1990 SC 371) the change in qualification would not hampered eligibility of the present petitioners. It is submitted that initially the basic educational qualification prescribed for the post is undisputedly a factor to be reckoned but this shows that at the time of initial entry in the service. Once the appointment is made and person is allowed to work for a considerable long time, it would be hard and harsh to deny him and, therefore, according Mr. Desai termination of present petitioners is bad and ONGC should be directed to absorb the petitioners in their respective jobs.

Undisputedly, the petitioners were contract labourers, not appointed by ONGC and the contractor under whom the present petitioners were working is not even a formal party.

The petitioners have prayed for the following main reliefs:

(A) Your Lordship may kindly be admitted this petition and allowed and issue appropriate writ i.e. Mandamus or directions, order to take them service as per law with continuity to service with all consequential arrears of pay etc.

(B) During pending disposal of this petition be pleased to issue direction to allow to resume

their duties temporary.

Relief (C) is important but in view of the contentions of the petitioners, it can be said to be a relief which could not be granted in the nature of averments made in the petition. Relief (D) & (E) are ancillary.

I have considered the stand of the petitioners and the affidavit in reply filed by Deputy General Manager, working in Hajira Project in ONGC dated 27.8.2001. It is rightly submitted that petitioners were never employed by ONGC and at the end of job contract ONGC invites contractors to provide workers and labourers prescribing qualifications as per the requirement and norms. As per the policy decision, the ONGC decided to allow the persons who are reasonably qualified and have minimum qualification of passing SSC examination. The ratio of decision of the Apex Court is laying down a clear proposition of law. The fact remains that a contractor cannot deploy the present petitioners with the work of ONGC otherwise the same would amounts to breach of conditions of contract between the ONGC and the Contractor. On the same ratio, the respondent-ONGC also cannot be directed mandatorily to absorb present petitioners in the job of ONGC permanently or in any other manner. Learned counsel appearing for ONGC has expressed apprehension that even on the strength of the order passed by this Court if petitioners are permitted to work with ONGC than other bidder contractors may raise some technical dispute and may drag the ONGC to litigation. As per the norms and policy of the ONGC as the petitioners were to be terminated by the contractor has taken care of the fact that petitioners are paid an amount of gratuity, retrenchment compensation, leave pay, bonus etc. ONGC accepts that even as per the Register of the contractor petitioners were working with ONGC since 1992. After intervention of the Court, learned counsel appearing for the ONGC has produced zerox copy from the register of contractor of Mr. D.K. Patel of Hajira Unit of ONGC where the names of present petitioners are reflected and register shows that both these petitioners had received Rs. 20,150/ each as total amount under various heads. Mr. Desai learned counsel appearing for petitioners states that the petitioners have not received this amount and the contractor had informed them that this amount has been adjusted qua the payment made earlier to them by way of advance salary etc. Without going into the correctness or inter-se transactions between the contractor and petitioners, the fact remains that petitioners are paid Rs. 20,150/ on the eve of

termination of contract i.e. 31.1.2001. The amount of gratuity more than Rs. 10,000/ is paid and Rs. 10,075/ has paid by way of retrenchment compensation. So, for short, I do not find any merits in this petition. It is rightly submitted that it is difficult for respondent-ONGC to absorb the petitioners.

The basic contention of the present petitioners is that as they had acquired enough experience in the Unit where they were working with ONGC and the length of time which they have spent with the Unit, some relaxation could have been made by ONGC qua such workers or labourers. The termination of the present petitioners is nothing but denial of their rights to work at a particular place as per the normal practice and procedure followed by ONGC. But this part of stand taken by the petitioners touches various disputed questions of facts and law and they can get these disputes to be resolved through appropriate forum and not by invoking jurisdiction of this Court under Article 226 of the Constitution of India. It is further observed that if or on any event respondents are convinced and feels that irrespective of educational qualification, these petitioners are able to perform duties officially in the chemical plant where they were working/or can work in such plant they may consider the case for re-employment of the petitioners. With these observations, this petition is dismissed with no order as to costs. Rule is discharged.

The dismissal of this petition would not come in the way of the petitioners if they want to resolve their disputes through Industrial Court or Labour Court.

(C.K. BUCH, J.)
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